

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT J. FILECCIA,
RICHARD FILECCIA,

Plaintiffs,

– against–

CITY OF NEW YORK, *et al.*,

Respondents.
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NOT FOR PUBLICATION

ORDER

10-CV-889 (ARR) (RML)

LEVY, United States Magistrate Judge:

On March 1, 2010, plaintiff Robert J. Fileccia (“plaintiff”), an attorney appearing *pro se*, along with his brother, Richard Fileccia, commenced this action alleging the violation of his civil rights against numerous defendants. Plaintiffs paid the \$350 filing fee to commence this action. Now, some two months later, plaintiff seeks to proceed *in forma pauperis* solely for the purpose of securing the assistance of the United States Marshal Service to effect service of process on “some of the one hundred twenty three (123) combined defendants by June 5 (CV10–530) and June 29, 2010 (CV10-889).”

Because plaintiff paid the filing fee to commence this action, he is not entitled to have the Court direct the United States Marshals Service (“USMS”) to effect service of process, as that applies only to plaintiffs granted *in forma pauperis* status. Nagy v. Dwyer, 507 F.3d 161, 164 (2d Cir. 2007); Fed. R. Civ. P. 4(c)(3). When a plaintiff has paid the filing fee, such a request is discretionary. Zarro v. Spitzer, No. 06-CV-1166, 2008 WL 4399442, at *1 (N.D.N.Y. Sept. 23, 2008). Here, plaintiff has not shown that a court-appointed process server is necessary “to keep the peace, or that [plaintiff, a licensed attorney] is unable to effectuate service.” Zarro, 2008 WL 4399442, at *2 (denying *pro se* prisoner’s request to have USMS effect service).

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Accordingly, plaintiff Robert J. Fileccia's request to proceed *in forma pauperis* is denied as moot, since he has already paid the filing fee to commence this action. Plaintiff's request to have the USMS effect service of process is denied as unnecessary and improper pursuant to Fed. R. Civ. P. 4(c)(3). Plaintiff's request to have this submission filed "in camera and under seal" is also denied. To the extent plaintiff seeks the same relief in Fileccia v. City of New York, No. 10 CV 530 (ARR)(RML), it is also denied for the reasons set forth herein.

SO ORDERED.

Dated: Brooklyn, New York
May 24, 2010

/S/

ROBERT M. LEVY
United States Magistrate Judge